558 N.W.2d 433 (1996)

219 Mich. App. 641

Carol Jean MUMAUGH and Muriel Frances Robinson, Plaintiffs-Appellees,
v.
Michael A. McCARLEY and Debra W. McCarley, Defendants-Appellants, and
Owners of Real Property in NJ. Crocker's Subdivision, Pinehurst Subdivision, and Pine Ridge Subdivision, Third-Party Defendants.
Freeda VANTOL, Petitioner-Appellant,
v.
PINEHURST SHORES, Respondent-Appellee.
H. John PHELPS III, Plaintiff-Appellant,
v.
BALDWIN TOWNSHIP BOARD, Michael A. McCarley and Debra McCarley, husband and wife, Jay R. Cooper, Jr. and Eleanore E. Cooper, husband and wife, and Michigan State Treasurer, Defendants-Appellees, and Daniel L. Trubac and Teresa M. Trubac, husband and wife, Timothy P. Kolnity and Debra L. Kolnity, husband and wife, Edward J. Lubinski and Eileen M. Lubinski, husband and wife, Donald T. Kelly and Marita H. Kelly, husband and wife, Harry Krueger, Iosco County Drain Commissioner, and Richard M. Harris, Chairperson, Iosco County Road Commissioners, Defendants.

Docket Nos. 172301, 172507 and 172522.

Court of Appeals of Michigan.

Submitted September 5, 1996, at Grand Rapids.

Decided November 1, 1996, at 9:20 a.m.

Released for Publication January 24, 1997.

434*434 Hardy, Lewis and Page by Thomas Hardy, David M. Davis, and Karl F. Newman, Birmingham, for H. John Phelps, III.

James W. Shotwell, Tawas City, for Michael A. and Debra W. McCarley and Freeda VanTol.

Jerry L. Schmidt, East Tawas, for Baldwin Township Board.

Before DOCTOROFF, C.J., and HOOD and BANDSTRA, JJ.

DOCTOROFF, Chief Judge.

These appeals arising from cases that were consolidated for trial concern an area on the western shore of Lake Huron where the lake has receded, exposing approximately two hundred feet of new land. The parties contest the boundary lines of the newly exposed area. Defendants Michael and Debra McCarley and plaintiff H. John Phelps, III, appeal as of right from the trial court's disposition of the property in issue. Petitioner Freeda VanTol appeals as of right from the trial court's decision that the VanTol property[1] was nonriparian. We reverse and remand.

The principal area in question in this case is a subdivision known as Pinehurst Shores, which contains ten lots on the western shore of Lake Huron in Baldwin Township. The property of plaintiff Phelps is directly south of the Pinehurst Shores subdivision. The VanTol property, which is the lot directly north of the Phelps property, is the southernmost lot in the subdivision and will be referred to as Lot 1.[2] Since the time when the subdivision was last platted by a surveyor in 1938, each lot gained approximately two hundred feet of land through recession of Lake Huron. However, the shape of the VanTol property, as set forth in the 1938 plat, was widest at its westernmost point and increasingly narrows as it angles toward the shores of Lake Huron. With the relicted land,[3] an extension of the previous VanTol property lines would cross inland, leaving the property without riparian access. Conversely, extension of the property lines for Lot 10, the northernmost lot in the Pinehurst subdivision, would result in additional lakefront footage for the parcel. For clarification, a diagram of the land is attached as Appendix A

Surveyor Richard Miller was hired by defendants Michael and Debra McCarley to survey the property for a potential sale to the VanTols. Miller discovered discrepancies between the subdivision's property lines as recorded in the 1938 plat and the legal 435*435 descriptions of the property in the underlying deeds. At the request of Baldwin Township, Miller thus drew up a proposed assessor's plat to resolve the discrepancies and to properly apportion the newly relicted land. Although Phelps' property was not part of the Pinehurst subdivision, Miller included the Phelps lot in the proposed plat, and recommended a reduction in Phelps' lakefront footage. At trial, Miller testified that Phelps' property became involved because the lot lines of the first three Pinehurst lots, if extended over the relicted land to the shore of Lake Huron, would converge on Phelps' property.

In attempting to distribute the newly relicted land, the trial court granted Phelps' request to be excluded from the disposition, because his property was not within the subdivision. The trial court then found that the VanTol property was nonriparian and thus had no right to have the extension of its property lines altered in order to retain its access to Lake Huron. The trial court also ordered that the lines of Lots 1, 2, and 3 be extended over the relicted land to the shore of Lake Huron. However, because of the southern slant of these property lines, the order had the effect of crossing the lines into Phelps' unplatted property. Although the trial court purportedly determined that Phelps' property should not be included in the Pinehurst plat, the order had the effect of reducing Phelps' shoreline from approximately ninety feet to approximately ten feet. In accordance with a proposed plat prepared by Richard Miller, the owners of Lots 5 through 10 agreed amongst themselves to extend their existing lot lines across the relicted land to the shore of Lake Huron. This agreement, which was accepted by the trial court, had the effect of retaining or expanding the amount of lakefront footage for the owners of Lots 5 through 10.

On appeal, Phelps argues that the trial court conducted an unconstitutional taking in depriving him of approximately eighty feet of lake frontage. We agree. Additionally, we agree with VanTol that the trial court erred in finding that the VanTol property was nonriparian.

I

On January 12, 1994, the trial court entered an order finding that the VanTol property was nonriparian and that Lots 1, 2, and 3 were to be extended over the relicted land to the shore of Lake Huron, despite the fact that the lines crossed into Phelps' unplatted property to the south of the subdivision. The trial court's order contained an assessor's plat reflecting the court's order. In extending the lot lines, the trial court expressly stated that "the property owned by Plaintjff-Phelps ... is hereby excluded from the plat." Despite the fact that the trial court purported to exclude Phelps' property, the plat ordered by the trial court had the effect of severely reducing the amount of shoreline property owned by Phelps. The deprivation of approximately eighty feet of lake frontage constituted an unconstitutional taking of Phelps' property.

Land bordering water is riparian land. *Thies v. Howland*, 424 Mich. 282, 287-288, n. 2, 380 N.W.2d 463 (1985). Riparian rights involve property rights that, if interfered with by the government, requires the payment of just compensation. *Peterman v. Dep't of Natural Resources*, 446 Mich. 177, 195, 521 N.W.2d 499 (1994). Both the Fifth Amendment of the United States Constitution and Art. 10, § 2 of the Michigan Constitution prohibit governmental taking of private property without just compensation. *Bevan v. Brandon Twp.*, 438 Mich. 385, 389-390, 475 N.W.2d 37 (1991), cert. den. 502 U.S. 1060, 112 S.Ct. 941, 117 L.Ed.2d 111 (1992). In this case, the trial court deprived Phelps of approximately eighty-five percent of his lake frontage. This order constituted a taking of Phelps' property in violation of the United States and Michigan Constitutions. Accordingly, we reverse the trial court's order and remand this case to the trial court for a new disposition of the relicted land.

Upon remand, in apportioning the relicted land, the key consideration should be fairness. *Stuart v. Greanyea*, 154 Mich. 132, 138, 117 N.W. 655 (1908). Thus, each riparian owner should receive a portion of the new lakeshore that is proportionate to the owner's prior lakefront ownership. 78 Am.Jr.2d, Waters, § 422, p. 869; *Stuart, supra*. In this 436*436 regard, it was error for the trial court to accept the agreement between the owners of Lots 5 through 10, because the agreement failed to apportion any of the loss in lakefront footage to those lot owners. In determining proper apportionment of the relicted land, fairness dictates that each parcel of affected land should have its lakefront reduced in proportion to the amount of lakefront originally held in each lot. Upon remand, the trial court should determine the natural boundaries of the lakefront property affected by the reliction[4] and apportion the new land proportionately among all affected landowners. The entire stretch of land within natural boundaries and affected by the reliction likely includes riparian owners not presently parties to this suit.[5] During oral argument, plaintiff Phelps indicated a willingness to join these individuals as parties to this litigation upon remand. Or, in the alternative, the trial court has the power to join any other necessary parties to the litigation. MCR 2.205(B). Once all potentially affected property owners have become parties to this lawsuit, the trial court should reapportion the area affected by the reliction, with the interest of fairness being the overriding factor in the disposition of the land. *Stuart, supra*.

II

Next, VanTol challenges the trial court's determination that her property, Lot 1 in the Pinehurst subdivision, is nonriparian. We agree with VanTol and reverse the trial court's decision.

The oddly shaped lot[6] currently owned by VanTol was previously sold in 1936. The deed for this transaction indicated that the lot was riparian, as the metes and bounds description stated that the northern boundary was to run "to the shore of Lake Huron, then north 18 degrees east 50 feet" Similarly, in a 1938 surveyor's plat, the property now owned by VanTol was renamed Lot 1, and the plat indicated that the east boundary of the lot was the meander line. When a plat shows a lot is bounded by the meander line of a lake, the grant of land is to the water's edge. *Gregory v. LaFaive*, 172 Mich. App. 354, 361, 431 N.W.2d 511 (1988). Thus, the 1938 plat indicated that the property was riparian.

Although there was testimony that the 1938 plat was erroneous, the trial court erred in relying on that testimony in deciding that the VanTol property was nonriparian. The VanTol property was conveyed with reference to the 1938 surveyor's plat, which named the property Lot 1 and indicated that the lot was riparian. Where land is disposed of by reference to an official plat, the boundary lines shown on the plat control. *Gregory, supra* at 359, 431 N.W.2d 511. Therefore, purchasers of such parcels have the right to rely on the reference to the plat though it may be erroneous. *Id.* Because both the legal description in the original 1936 conveyance and the 1938 surveyor's plat indicated that Lot 1 was riparian, and because each subsequent conveyance of the parcel referred to the 1938 plat, we find that the trial court's determination that the VanTol property was nonriparian was clearly erroneous. See *Arm Industries Corp. v. American Motorists Ins. Co.*, 448 Mich. 395, 410, 531 N.W.2d 168 (1995). Accordingly, we reverse the trial court's finding that the VanTol property was nonriparian.

III

We next consider plaintiff Phelps' argument that the trial court erred in permitting an expert witness to testify regarding his belief that the proposed assessor's plat was "fair." We disagree.

Surveyor Richard Miller, who devised a proposed plat for the affected area, testified at trial in this case. Over objection, Miller was allowed to state at trial, "I would 437*437 conclude that [the proposed plat] would seem to be the fairest disposition of the problem." As an expert witness, Miller's challenged testimony was admissible under MRE 702 and MRE704. MRE 702 provides:

If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

MRE 704 provides:

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

As an expert witness, Miller was permitted by MRE 702 to testify in the form of an opinion regarding the rationale behind his proposed assessor's plat. Miller prefaced his opinion by stating that the proposed plat would affect only the lots that had been subjected to reliction and that no single landowner would be unduly harmed. In addition, under MRE 704, Miller was allowed to state his opinion that the proposed solution was fair, despite the fact that fairness was an issue for

the trier of fact to determine. Accordingly, the trial court's decision to allow the opinion testimony of Miller was not an abuse of discretion.

Reversed and remanded.

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[1] The property referred to here as the "VanTol" property was originally owned by Michael and Debra McCarley. This lawsuit began when discrepancies in the lot lines were found during a survey conducted at the McCarleys' request in anticipation of a sale to VanTol.

[2] Although the VanTol property was the first lot in the subdivision and was originally labeled Lot 1, the assessor's proposed plat renumbered the properties, naming the Phelps property Lot 1, the VanTol property Lot 2, and labeling each lot one number higher than its original designation, and increasing the total number of lots to eleven. The trial court eventually decided to exclude the Phelps property from its determination and returned the lots to their original numerical designation. This Court will also use the lots' original numerical designations. Thus, the VanTol property shall remain Lot 1, and each of the ten lots in the subdivision will be numbered in sequence to the north of the VanTol property. The Phelps property will have no numerical designation, because it is not a part of the Pinehurst subdivision.

[3] Relicted land is made by the withdrawal of the waters by which it was previously covered. Black's Law Dictionary, 4th ed., p. 1455.

[4] In *Blodgett & Davis Lumber Co. v. Peters,* 87 Mich. 498, 49 N.W. 917 (1891), the Court similarly determined the natural boundaries and proportionately determined the lines of ownership.

[5] According to plaintiff Phelps, the natural boundaries of the relicted beach extend from the northern edge of the Pinehurst subdivision to the southern edge of the subdivision to the south of Phelps' property.

[6] As noted above, the lot is widest at its westernmost point and narrows as it reaches east toward Lake Huron.